

VZCZCXRO4476

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DE RUEHBS #0868/01 1611217
ZNR UUUUU ZZH
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FM USEU BRUSSELS
TO RUEHC/SECSTATE WASHDC
INFO RUEHZL/EUROPEAN POLITICAL COLLECTIVE
RHMFIUU/DEPT OF HOMELAND SECURITY WASHINGTON DC
RUEAWJA/DOJ WASHDC
RUEHGV/USMISSION GENEVA

UNCLAS SECTION 01 OF 03 BRUSSELS 000868

SIPDIS

E.O. 12958: N/A

TAGS: [CVIS](#) [PREL](#) [PREF](#) [SMIG](#) [KCRM](#) [EUN](#)

SUBJECT: EU MINISTERS AGREE ON "RETURN DIRECTIVE"

SUMMARY

1. EU Interior Ministers in the June 5 JHA Council recorded their agreement on common standards and procedures in Member States for returning illegally staying non-EU nationals (the "Return Directive"). The Council encouraged Member States to "voluntarily" take on refugees from Iraq, focusing on more vulnerable people, while underlining that protection should be provided primarily in the region itself. Ministers approved the signing of a PNR agreement with Australia. They set the date for moving to the second generation of the Schengen Information System (SIS II) at September 30, 2009. They also agreed on modalities for implementing the "Pr|m Decision" on the stepping up of cross-border cooperation and welcomed priorities set by CT coordinator Gilles de Kerckhove for ongoing implementation of the EU counter-terrorism strategy and action plan. Full text of Council conclusions has been transmitted to EUR/ERA and can be found on the EU Council website (<http://consilium.europa.eu>). END SUMMARY.

RETURN DIRECTIVE

2. EU Interior Ministers in the June 5 JHA Council meeting in Luxembourg recorded their agreement on the draft Directive setting common standards and procedures in Member States for returning illegally staying non-EU nationals (the "Return Directive"). The draft, which is subject to co-decision by the Council and European Parliament (EP), will leave unaffected the procedural safeguards for asylum seekers, already regulated in another EU Directive. The new piece of legislation was depicted by EU officials as ensuring a more harmonized and effective approach to return procedures, while respecting the rights of non-EU migrants in an illegal situation. Detention will only be permitted where other less coercive measures cannot be applied and will require a decision in writing with reasons in fact and in law. Detention shall be for as short a period as possible and only maintained as long as removal arrangements are in progress. Several NGOs nevertheless criticized provisions allowing for migrants to be detained for up to 18 months (in exceptional circumstances only, the normal limitation being six months) and to face a re-entry ban of up to 5 years.

3. A compromise tabled by the Slovenian Presidency previously gained support from a qualified-majority of Member States at May 22 COREPER (EU PermReps). Since then, one outstanding issue (the question of legal assistance to detained migrants) was the subject of further discussions conducted by the Slovenian Presidency with Member States and key EP members, which produced a revised overall compromise that was easily rubber-stamped by all delegations in the June 5 Council. The solution - changing the wording of the disputed provision by stating that Member States "should" (instead of "may") provide legal assistance to detained migrants - was reached thanks to a declaration by the Commission, which proposed to have recourse to EU funds available under the European Refugee Fund. This will make it possible to finance the provision of judicial assistance in cost-minded Member States (Germany, Austria), while meeting the EP's concerns related to migrants' rights. Slovenian Interior

Minister/Council chair Dragutin Mate told reporters he was confident the overall compromise would be approved by the whole European Parliament in a June 18 vote, which would make it possible to adopt the Directive at first reading.

¶4. Commission Vice-President Barrot urged critics of the draft piece of legislation to be fair in their assessment. According to Barrot, the revised draft was providing guarantees that "should be sufficient to allay the fears of NGOs and churches." Barrot nevertheless called on Member States to pay particular attention to the rights of the child when implementing the Directive. He made it clear that "the Commission intends to pay very close attention to that aspect."

RESSETTLEMENT OF IRAQI REFUGEES

¶5. Per request of the German delegation, the Council addressed the resettlement of refugees from Iraq in the EU. A non-paper tabled by German Interior Minister Scha|ble called on the EU, "in the light of the ongoing widespread insecurity, violence and violation of human rights in Iraq," to help resettle people in need of protection, according to press reports. Speaking at a post-Council press conference, Slovenian minister/Council chair Mate said the Council did not discuss numbers but encouraged Member States to "voluntarily take refugees on board," focusing on resettlement opportunities for vulnerable persons from Iraq in need of protection like women and children. Mate noted that some ministers underlined that protection should continue to be provided primarily in the region itself, pointing out that "the resettlement of one person in the EU costs as much as 100 persons receiving assistance in the region."

¶6. The Council conclusions further welcomed the contributions that

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Member States are already providing by giving financial assistance to the region, by hosting asylum seekers and refugees from Iraq and by resettling refugees under national programs. Member States were "asked to cooperate with UNHCR and other relevant organizations and players in the region in the implementation of resettlement." The Commission will review the possibilities for the resettlement of Iraqi refugees to be funded under existing programs such as the European Refugee Fund. Scha|ble separately told reporters he hoped that an EU-wide agreement on specific resettlement measures could be reached by September at the latest. While expressing the EU's willingness to "help people in distress" and his expectation for concrete measures to be adopted, Mate openly voiced doubts it will be possible for the EU-27 to reach the necessary consensus.

PNR AGREEMENT WITH AUSTRALIA

¶7. The Council approved the signing of the Agreement between the EU and Australia on the processing and transfer of EU-sourced passenger name record (PNR) data to the Australian Customs Service. The agreement, which follows on similar deals with the U.S. and Canada, contains "detailed assurances for the protection of PNR data transferred from the EU concerning passenger flights to or from Australia," according to the Council conclusions. Commission Vice-President Barrot said negotiations made it possible to ensure that the transmission of data would be restricted to the competent authorities through the so-called "push system." Australia and the EU will periodically review the implementation of the agreement and take any action deemed necessary in the light of such review.

SCHENGEN DEVELOPMENTS

¶8. The Council and the Schengen Mixed Committee (EU members plus Norway, Iceland, Switzerland and Liechtenstein) noted the state of play with respect to preparations and schedule for the introduction of the second generation Schengen Information System (SIS II). The date for moving from SIS 1 + to SIS II was set at September 30, ¶2009. Commission Vice-President Barrot said respect of the

timetable would be subject to "a clear delineation of responsibilities, a totally unambiguous decision-making process, and the setting of binding deadlines."

¶9. The Council approved a decision on the application of the provisions of the Schengen "acquis" relating to the SIS in Switzerland. The decision allows for SIS data to be transferred to Switzerland (from June 9, 2008) and for Switzerland to enter data into the SIS and use SIS data (from August 14, 2008).

EXTENSION OF LONG-TERM RESIDENCE STATUS

¶10. The Council remained split on a proposal for the extension of long-term resident status (enjoyed by those residing more than 5 years in a Member State) to refugees and persons benefiting from subsidiary protection. A majority of delegations backed the inclusion of both categories in the scope of the Directive, without any difference of treatment between them but some delegations argued for limiting the scope of the extension to refugees only. The Presidency, noting that the necessary unanimity to adopt the directive could not be reached, concluded that the negotiations would be pursued under the French Presidency.

IMPLEMENTING PRUM DECISION

¶11. The Council reached agreement on a Decision laying down the necessary administrative and technical provisions for the implementation of a Decision on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime (the "Pr|m Decision"). The implementing Decision will establish common normative provisions (details in Council press release) seen as indispensable for administrative and technical implementation of the forms of cooperation set out in the Pr|m Decision, especially for the automated exchange of DNA data, dactyloscopic data and vehicle registration data.

COUNTER-TERRORISM: REPORT BY CT COORDINATOR

¶12. EU Counter-Terrorism Coordinator Gilles de Kerckhove presented to the Council his report on the implementation of the EU strategy and action plan to combat terrorism as well as his priorities for further action in the field. The report (full text transmitted to ERA) takes stock of progress since December 2007 and the state of play regarding ratification of Conventions and implementation of relevant EU pieces of legislation. According to the Council's conclusions, the Council expressed its appreciation for de

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Kerckhove's analysis and "shared his views on the proposals that he made to concentrate work in the coming months on the prevention of radicalization and on the identification of technical assistance to Northern Africa/Sahel and Pakistan."

¶13. The Council reached a political agreement on a Directive concerning the identification and designation of European Critical Infrastructure (ECI) and the assessment of the need to improve their protection.

MISCELLANEOUS

¶14. Among other items, the Council adopted conclusions on:

- The management of the EU's external borders;
- Enhancing the EU's "global approach" to migration;
- Possible cooperation mechanism between civilian ESDP missions and EUROPOL concerning mutual exchange of information;
- Cooperation with candidate countries and potential candidates of Western Balkans in the area of civil defense.

¶15. On the fringes of the Council, the EU signed joint declarations on a "mobility partnership" with Moldova and Cape Verde. Such mobility partnerships are designed to better manage migration flows by facilitating legal migration and fighting against illegal immigration, while promoting capacity building in the partner countries.

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